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2010-0892

AGREEMENT FOR STATE LOBBYING SERVICES

THE STATE OF TEXAS ,

COUNTY OF HARRIS ,

THIS AGREEMENT FOR PROFESSIONAL LOBBYING SERVICES ("Agreement") is made on the date countersigned by the City Controller ("Effective Date"), by and between the **CITY OF HOUSTON, TEXAS** (the "City"), a Texas Home Rule City of the State of Texas principally situated in Harris County, and **Hilco Partners**(the "Contractor"), a Texas corporation.

The Parties agree as follows:

ARTICLE 1. PARTIES

1.1. ADDRESS

1.1.1. The initial addresses of the Parties, which one Party may change by giving written notice of its changed address to the other Party, are as follows:

<u>City</u>	<u>Contractor</u>
Director or Designee Department of Intergovernmental Relations City of Houston P. O. Box 1562 Houston, Texas 77251	William Miller Hilco Partners 823 Congress Avenue, Suite 900 Austin, Texas 78701

1.2. TABLE OF CONTENTS

1.2.1. This Agreement consists of the following articles and exhibits:

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B	Fee Schedule
C	Title VI: Non-Discrimination
D	Drug Policy Compliance Agreement
E	Contractor's Certification of No Safety Impact Positions
F	Drug Policy Compliance Declaration

1.3. PARTS INCORPORATED

1.3.1. The above described articles and exhibits are incorporated into this Agreement.

1.4. CONTROLLING PARTS

1.4.1. If a conflict among the articles and exhibits arises, the articles control over the exhibits.

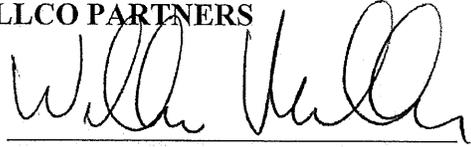
[SIGNATURE PAGE FOLLOWS]

1.5. SIGNATURES

1.5.1. The Parties have executed this Agreement in multiple copies, each of which is an original.

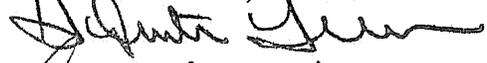
CONTRACTOR:

HILLCO PARTNERS

By: 
NAME: WILLIAM MILLER
POSITION: PARTNER

CITY:

CITY OF HOUSTON, TEXAS


By: Amanda Washington
Mayor

**ATTEST/SEAL (if a corporation):
WITNESS (if not a corporation):**


NAME: Linda Lucko

ATTEST/SEAL:


City Secretary

Tax Identification No.: 74-2883150

APPROVED:

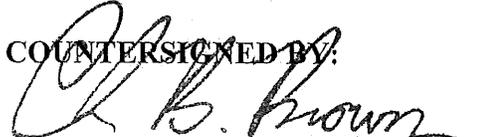

Director, Intergovernmental Relations

Chief Procurement Officer

APPROVED AS TO FORM:

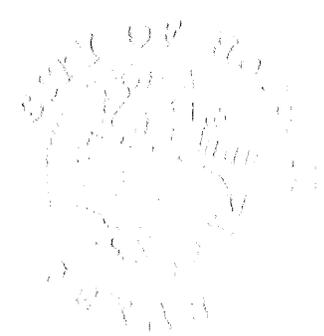

Assistant City Attorney
L.D. File No. 042116000146001

COUNTERSIGNED BY:


City Controller Jensen Polk

DATE COUNTERSIGNED:

12-2-16
("Effective Date")



ARTICLE 2. DEFINITIONS

- 2.1. In addition to the words and terms defined elsewhere in this Agreement, the following terms have the meanings set out below:
- 2.1.1. “*Accept*” or “*Acceptance*” means the act of the Director by which the City assumes for itself, approval of specific services, as partial or complete performance of the Agreement.
 - 2.1.2. “*Agreement*” means this contract between the Parties, including all exhibits and any written amendments authorized by City Council and Contractor.
 - 2.1.3. “*Business Day(s)*” mean(s) any day that is not a Saturday, Sunday, or City Holiday. In the event that any deadline set forth in this Agreement falls on a Saturday, Sunday, or City Holiday, the deadline shall automatically be extended to the next day that is not a Saturday, Sunday, or City Holiday.
 - 2.1.4. “*City*” is defined in the preamble of this Agreement and includes its successors and assigns.
 - 2.1.5. “*City Attorney*” means the City Attorney of the City or any person designated by the City Attorney to perform one or more of the duties of the City Attorney under this Agreement.
 - 2.1.6. “*City Data*” means all Documents and/or Information: (i) that the City discloses, supplies, or provides to Contractor under, pursuant to, or in connection with this Agreement, (ii) that Contractor obtains, receives, or collects under, pursuant to, or in connection with this Agreement, and/or (iii) collected, received, entered, stored, archived, retained, maintained, processed, or transmitted in, into, or by the Software. “*City Data*” does not include the Software, the Object Code, or the Source Code.
 - 2.1.7. “*City Holiday*” means any official City of Houston holiday as determined each year by the City Council.
 - 2.1.8. “*City Personnel*” means all City employees, but not elected officials.
 - 2.1.9. “*Confidential Information*” means all non-public Documents or Information of a Party to this Agreement, including without limitation any such Documents or Information that is identified as or would be reasonably understood to be confidential, proprietary, and/or sensitive.
 - 2.1.10. “*Contractor*” is defined in the preamble of this Agreement and includes its successors and assigns.
 - 2.1.11. “*Contractor Data*” means all Documents and/or Information that Contractor discloses, supplies, or provides to the City under, pursuant to, or in connection

with this Agreement. "Contractor Data" includes the Software, the Object Code, and the Source Code.

- 2.1.12. "*CPO*" means the City of Houston Chief Procurement Officer.
- 2.1.13. "*Day(s)*" means calendar day, including weekends and legal holidays, whether capitalized or not, unless otherwise specifically provided. In the case of plural "days", those days will be consecutive.
- 2.1.14. "*Deliverable(s)*" mean(s) any services, products, goods, software, case management databases and applications, documents, or other tangible item provided by Contractor to the City in connection with this Agreement.
- 2.1.15. "*Director*" means the Director of the Intergovernmental Relations Department, or any person designated by the Director to perform one or more of the Director's duties under this Agreement.
- 2.1.16. "*Disclosing Party*" means a Party who discloses, supplies, or provides Confidential Information to another Party or whose Confidential Information is otherwise in the possession, custody, or control of another Party.
- 2.1.17. "*Documents*" means all original and non-identical copy of any written, typed, or printed matter, or electronically stored information, of any kind or description.
- 2.1.17.1. The word "documents" includes, but is not limited to, the following: agendas, analyses, audio or video recordings, bulletins, charts, circulars, communications (including any interoffice, social media, and other communications), computations, computer programs, copies, correspondence, data, databases, data compilations, data prototypes, designs, diagrams, diskettes, documents, drafts, drawings, electronic mail (email), electronically stored information, exhibits, facsimiles, forms, graphs, guides, images, information, inventions, items, letters, logs, manuals, maps, materials, memoranda, metadata, microfilm, minutes or meeting minutes, models, notes, notations, notebooks, operating manuals, original tracings of all drawings and plans, other graphic matter (however produced or reproduced), pamphlets, photographs (including any digital or film photographs), plans, printouts, policies, procedures, records, recordings (including any audio, video, digital, film, tape, and other recordings), reports, social media communications, software, specifications, tabulations, telegrams, underlying data, works, worksheets, work products, writings, and any other writings or recordings of any type or nature (and any revisions, modifications, or improvements to them).
- 2.1.18. "*Documentation*" means the written and/or electronic end-user or technical documentation pertaining to the Software and/or Equipment that is either directly

or indirectly: (i) provided to the City by Contractor, or (ii) otherwise published or posted online by Contractor.

- 2.1.19. “*Effective Date*” means the date the City Controller countersigns the signature page of this Agreement and the Agreement becomes effective and binding.
- 2.1.20. “*Equipment*” or “*equipment*” mean(s) any and all hardware, equipment, material, goods, products, or other tangible items that Contractor provides or furnishes to City under, pursuant to, or in connection with this Agreement.
- 2.1.21. “*Information*” means all information, data, facts, or knowledge of any kind or description whether in tangible or intangible form.
- 2.1.22. “*Include*” and “*including*”, and words of similar import, shall be deemed to be followed by the words “without limitation”.
- 2.1.23. “*Materials*” means any component and/or part (hardware or software).
- 2.1.24. “*Notice to Proceed*” means a written communication from the Director to Contractor instructing Contractor to begin performance under this Agreement.
- 2.1.25. “*Party*” or “*Parties*” means City and Contractor who are bound by this Agreement, individually or collectively as indicated in the context by which it appears.
- 2.1.26. “*Proprietary Rights*” mean any copyrights, trademarks, trade secrets, patents, or any other intellectual or proprietary rights.
- 2.1.27. “*Receiving Party*” means a Party who obtains, receives, or collects Confidential Information of another Party or who otherwise has possession, custody, or control of Confidential Information of another Party.
- 2.1.28. “*Services*” means all services required by or reasonably inferable from the Agreement and **Exhibit A** including all labor, materials, tools, supplies, equipment, transportation, mobilization, insurance, subcontracts, supervision, management, reports, incidentals, quality control, and other items necessary or incidental by Contractor to fulfilling Contractor’s obligations.
- 2.1.29. “*Term*” means the entire period during which this Agreement is in effect, starting on the Effective Date and continuing through the final date of termination or expiration of this Agreement, including any renewals or extensions.

2.1.30. “*Work Products*” means all Documents or Information that the City and/or Contractor creates, develops, modifies, prepares, produces, or writes under, pursuant to, or in connection with this Agreement. “*Work Products*” does not mean or include the Software, the Source Code, or Object Code.

2.1.31. “*Writing*” or “*written*” shall mean a written communication from one Party to the other, including an electronic communication or e-mail.

2.2. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words in the singular include the plural.

2.3. The word “*shall*” is always mandatory and not merely permissive.

ARTICLE 3. DUTIES OF CONTRACTOR

3.1. SCOPE OF SERVICES

3.1.1. In consideration of the payments specified in this Agreement, Contractor shall provide all labor, material, and supervision necessary to perform the Services and furnish the Deliverables described in **Exhibit A**.

3.2. COORDINATE PERFORMANCE

3.2.1. Contractor shall coordinate its performance with the Director. Contractor shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Agreement.

3.3. REPORTS

3.3.1. Contractor shall submit all reports and progress updates required by the Director and as may be required in **Exhibit A**.

3.4. SCHEDULE OF PERFORMANCE

3.4.1. Time of Performance

3.4.1.1. The Director shall provide Contractor a written Notice to Proceed specifying a date to begin performance.

3.4.2. Time Extensions

3.4.2.1. If Contractor requests an extension of time to complete its performance, then the Director may, in consultation with the CPO, extend the time so long as the extension does not exceed 180 calendar days. The extension must be in writing, but does not require amendment of this Agreement.

Contractor is not entitled to damages for delay(s) regardless of the cause of the delay(s).

3.5. PROMPT PAYMENT OF SUBCONTRACTORS

3.5.1. In accordance with the Texas Prompt Payment Act, Contractor shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.**

3.6. CONTRACTOR'S PERSONNEL

3.6.1. In selecting Contractor for this Agreement, the City relied on the qualifications and experience of those persons identified by Contractor by name as performing the Services ("Key Personnel") as listed in **Exhibit C**. Contractor must not reassign or replace Key Personnel without the Director's prior written approval. Upon the Director's approval, the Director shall update **Exhibit C**, which does not require amendment to this Agreement, to reflect the new Key Personnel.

3.6.2. Contractor shall replace any of its personnel, including Key Personnel, or subcontractors whose performance, work, or work product is deemed unsatisfactory at the Director's discretion.

3.7. RELEASE

3.7.1. **CONTRACTOR AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S SOLE OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.**

3.8. INDEMNIFICATION

3.8.1. **CONTRACTOR AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH**

OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- 3.8.1.1. CONTRACTOR'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY IN NUMBERED PARAGRAPHS 3.8.1.1.-3.8.1.3., "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;**
 - 3.8.1.2. THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND**
 - 3.8.1.3. THE CITY'S AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT.**
- 3.8.2. CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CONTRACTOR SHALL NOT INDEMNIFY THE CITY FOR THE CITY'S SOLE NEGLIGENCE.**

3.9. INTELLECTUAL PROPERTY RELEASE AND INDEMNIFICATION

- 3.9.1. CONTRACTOR AGREES TO AND SHALL RELEASE AND DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY BY ANY PARTY, INCLUDING CONTRACTOR, ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CONTRACTOR FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, SERVICE MARK, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CONTRACTOR SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**
- 3.9.2. CONTRACTOR SHALL NOT SETTLE ANY CLAIM ON TERMS WHICH PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.**

3.9.3. **WITHIN SIXTY (60) DAYS AFTER BEING NOTIFIED OF THE CLAIM, CONTRACTOR SHALL, AT ITS OWN EXPENSE, EITHER (1) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (2) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CONTRACTOR SHALL REFUND THE PURCHASE PRICE.**

3.10. SUBCONTRACTOR'S INDEMNITY

3.10.1. **CONTRACTOR SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.**

3.11. INDEMNIFICATION PROCEDURES

3.11.1. Notice of Claims.

3.11.1.1. If the City or Contractor receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving Party shall give written notice to the other Party within 10 days. The notice must include the following:

3.11.1.1.1. a description of the indemnification event in reasonable detail, and

3.11.1.1.2. the basis on which indemnification may be due, and

3.11.1.1.3. the anticipated amount of the indemnified loss.

3.11.1.2. This notice does not stop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the 10 day period, it does not waive any right to indemnification except to the extent that Contractor is prejudiced, suffers loss, or incurs expense because of the delay. If Contractor does not provide this notice within the 10-day period, it does not waive any right to indemnification except to the extent that City is prejudiced, suffers loss or incurs expenses because of the delay.

3.11.2. Defense of Claims.

3.11.2.1. *Assumption of Defense.* Contractor may assume the defense of the

claim at its own expense. If Contractor assumes the defense of the claim, Contractor shall then control the defense and any negotiations to settle the claim. Contractor shall notify the City of any and all offers to settle the claim.

3.11.2.2. *Continued Participation.* If Contractor elects to defend the claim, the City may retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Contractor may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Contractor does not fund in full, or (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

3.12. INSURANCE

3.12.1. *Risks and Limits of Liability.* Contractor shall maintain the following insurance coverages in the following amounts:

<u>Coverage</u>	<u>Limit of Liability</u>
Workers' Compensation	Statutory for Workers' Compensation
Employer's Liability	<ul style="list-style-type: none"> • Bodily Injury by Accident \$500,000 (each accident) • Bodily Injury by Disease \$500,000 (policy limit) • Bodily Injury by Disease \$500,000 (each employee)
Commercial General Liability: Bodily and Personal Injury; Products and Completed Operations Coverage	Bodily Injury and Property Damage, Combined Limits of \$1,000,000 each Occurrence, and \$2,000,000 aggregate
Automobile Liability	\$1,000,000 combined single limit for (1) Any Auto or (2) All Owned, Hired, and Non-Owned Autos
Professional Liability	\$1,000,000 per occurrence; \$2,000,000 aggregate
Excess Liability applicable to CGL, and Auto	\$1,000,000
Aggregate Limits are per 12-month policy period unless otherwise indicated.	

3.12.2. *Insurance Coverage.* At all times during the term of this Contract and any extensions or renewals, Contractor shall provide and maintain insurance coverage that meets the Contract requirements. Prior to beginning performance under the Contract, at any time upon the Director's request, or each time coverage is renewed or updated, Contractor shall furnish to the Director current certificates of insurance, endorsements, all policies, or other policy documents evidencing adequate coverage, as necessary. Contractor shall be responsible for and pay (a) all premiums and (b) any claims or losses to the extent of any deductible amounts. Contractor waives any claim it may have for premiums or deductibles against the

City, its officers, agents, or employees. Contractor shall also require all subcontractors or consultants whose subcontracts exceed \$100,000 to provide proof of insurance coverage meeting all requirements stated above except amount. The amount must be commensurate with the amount of the subcontract, but no less than \$500,000 per claim.

3.12.3. *Form of Insurance.* The form of the insurance shall be approved by the Director and the City Attorney; such approval (or lack thereof) shall never (a) excuse non-compliance with the terms of this Section, or (b) waive or estop the City from asserting its rights to terminate this Contract. The policy issuer shall (1) have a Certificate of Authority to transact insurance business in Texas, or (2) be an eligible non-admitted insurer in the State of Texas and have a Best's rating of at least B+, and a Best's Financial Size Category of Class VI or better, according to the most current Best's Key Rating Guide.

3.12.4. *Required Coverage.* The City shall be an Additional Insured under this Contract, and all policies, except Professional Liability and Worker's Compensation, shall explicitly name the City as an Additional Insured. The City shall enjoy the same coverage as the Named Insured without regard to other Contract provisions. Contractor waives any claim or right of subrogation to recover against the City, its officers, agents, or employees, and each of Contractor's insurance policies except professional liability must contain coverage waiving such claim. Each policy, except Workers' Compensation and Professional Liability, must also contain an endorsement that the policy is primary to any other insurance available to the Additional Insured with respect to claims arising under this Contract. If professional liability coverage is written on a "claims made" basis, Contractor shall also provide proof of renewal each year for two years after substantial completion of the Project, or in the alternative: evidence of extended reporting period coverage for a period of two years after substantial completion, or a project liability policy for the Project covered by this Contract with a duration of two years after substantial completion.

3.12.5. *Notice.* **CONTRACTOR SHALL GIVE 30 DAYS' ADVANCE WRITTEN NOTICE TO THE DIRECTOR IF ANY OF ITS INSURANCE POLICIES ARE CANCELED OR NON-RENEWED.** Within the 30-day period, Contractor shall provide other suitable policies in order to maintain the required coverage. If Contractor does not comply with this requirement, the Director, at his sole discretion, may immediately suspend Contractor from any further performance under this Agreement and begin procedures to terminate for default.

3.13. PROFESSIONAL STANDARDS

3.13.1. Contractor's performance shall conform to the professional standards prevailing in the Harris County, Texas, with respect to the scope, quality, due diligence, and care of the services and products Contractor provides under this Agreement.

3.14. RESERVED

3.15. RESERVED

3.16. RESERVED

3.17. USE AND OWNERSHIP OF DATA AND WORK PRODUCTS

- 3.17.1. The City may use and shall be permitted to use all City Data, Contractor Data, and Work Products.
- 3.17.2. Contractor warrants that it owns the copyright to Contractor Data.
- 3.17.3. Contractor conveys and assigns to the City its entire interest and full ownership worldwide in and to all Work Products and all Proprietary Rights therein.
- 3.17.4. Contractor shall not claim or exercise any Proprietary Rights in or to the Work Products. If requested by the Director, Contractor shall place a conspicuous notation on any Work Products indicating that the City owns the Work Products and the Proprietary Rights therein.
- 3.17.5. Contractor's assignment of its interest in the Work Products and the Proprietary Rights therein to the City does not constitute a mere license or franchise to the City.
- 3.17.6. Contractor shall execute all documents required by the Director to further evidence Contractor's assignment and the City's ownership of the Work Products and the Proprietary Rights therein. Contractor shall cooperate with City in registering, creating, and enforcing the City's ownership of the Work Products and the Proprietary Rights therein.
- 3.17.7. All Work Products are "works made for hire."
- 3.17.8. Contractor shall deliver to the Director all or any part of the original City Data, Contractor Data, Work Products, and/or all other files and materials that Contractor produces or gathers during its performance under this Agreement, in the format and on the media specified by Director, within five Business Days after written request from Director or after this Agreement terminates or otherwise expires.
- 3.17.9. Contractor may retain copies of the Work Products for its archives. Contractor shall not otherwise use, sell, license, or market the Work Products.
- 3.17.10. Notwithstanding anything to the contrary, the City is, will be, and shall remain at all times the sole owner of all City Documents and all Work Products. Contractor expressly acknowledges that the City has all right, title, or other ownership interest in all City Documents and all Work Products. Contractor

shall not possess or assert any lien or other right against any City Documents or Work Products.

3.18. ACCEPTANCE AND REJECTION

- 3.18.1. Contractor shall not be entitled to payment and the City shall have no duty to pay Contractor unless the Director has Accepted the Services and other Deliverables as set forth in **Exhibit A**.
- 3.18.2. Contractor shall provide written notice to the Director upon completion and/or delivery of the Services and other Deliverables as set forth in **Exhibit A**. The Director shall Accept in writing such Services and other Deliverables on or before the 20th Business Day after the date of receipt of such notice by the Director unless, prior to such 20th Business Day, the Director sends written notice to Contractor stating the reason(s) why any Services and other Deliverables have been rejected and not Accepted.
- 3.18.3. Notwithstanding anything to the contrary in **Exhibit A** or elsewhere, the Director may, in his sole discretion, approve in writing a partial Acceptance of the Services and other Deliverables set forth in **Exhibit A**.
- 3.18.4. If the Director rejects any Services or other Deliverables, Contractor shall have 10 Business Days after the Director sends written notice of rejection to correct or otherwise replace such Services or other Deliverables as necessary to conform to this Agreement, at no additional cost to the City. Contractor shall provide written notice to the Director upon completion of any such correction(s) or replacement(s) after the receipt of which the Director shall continue to either Accept or reject (as provided under this Section) and Contractor shall continue to make any necessary correction(s) or replacement(s) (as provided under this Section) until the Director Accepts in writing all previously rejected Services or other Deliverables.
- 3.18.5. Notwithstanding anything to the contrary herein or elsewhere, if the Director does not Accept any Services or other Deliverables after one or more attempted correction(s) or replacement(s) of such Services or other Deliverables by Contractor, the Director may, in his sole discretion, issue a final rejection notice to Contractor for all Services and other Deliverables (whether or not previously Accepted), the City shall return all Equipment and Software to Contractor at no cost to the City, the City shall have no obligation to pay any amount whatsoever under this Agreement, Contractor shall immediately refund any and all amounts paid by City under this Agreement, and this Agreement shall immediately terminate.
- 3.18.6. The City reserves all other available rights and remedies at law or in equity, including without limitation all rights and remedies and rights under Article 2 of the Texas Business and Commercial Code.

3.19. DATA SECURITY

- 3.19.1. Contractor shall maintain and enforce data, safety, and physical security procedures with respect to its access and maintenance of the City's Data that: (i) are at least equal to industry standards for such types of locations where Contractor hosts, maintains, manages, processes, and stores any of the City's Data, and (ii) provides reasonably appropriate technical and organizational safeguards against accidental, unauthorized, or unlawful access, alteration, destruction, disclosure, loss, misuse, modification, or theft of the City's Data and all other data owned by the City and accessible by Contractor under this Agreement.
- 3.19.2. Contractor shall host, maintain, manage, process, and store all of the City's Data only in the continental United States and in a physically and logically secure environment that protects it from accidental, unauthorized, or unlawful access, alteration, destruction, disclosure, loss, misuse, modification, or theft. Contractor shall maintain an adequate level of data, safety, and physical security controls to ensure compliance with the requirements of this Agreement and other applicable laws or regulations relating to data privacy, security, and/or protection.
- 3.19.3. Contractor shall implement and maintain disaster recovery and avoidance procedures to ensure that the Services under this Agreement are not interrupted during any disaster and that the City's Data is not lost or destroyed during any disaster. Contractor shall provide the City with a copy of its current disaster recovery and business continuity plan(s) and all updates thereto during the Term of this Agreement. All requirements of this Agreement, including those relating to security, personnel due diligence and training, backup, and testing shall apply to Contractor's disaster recovery site.
- 3.19.4. For any of the City's Data that Contractor hosts, maintains, manages, processes, or stores, Contractor shall: (i) perform and execute nightly database or systems backups to a backup server; (ii) perform and execute incremental database transaction log file backups every 30 minutes to a backup server; (iii) perform and execute weekly backups of all hosted City's Data and the default path to a backup server; (iv) replicate the City's database(s) and default path(s) to an off-site or secondary location (i.e., other than the primary data center), and (v) save the last 14 nightly database backups on a secure transfer server (i.e., at any given time, the last 14 nightly database backups will be on the secure transfer server) from which City may and shall have the right to retrieve the database backups at any time.
- 3.19.5. Contractor shall immediately notify the Director and City Attorney of any breach of security known to Contractor that may affect the City's Data and cooperate with the Director and City Attorney to address the breach.
- 3.19.6. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors who provide services in connection with this Agreement which written agreements shall bind them to the terms of this **Section 3.20, Data Security**.

3.20. CONFIDENTIALITY

3.20.1. Except as otherwise provided in this Agreement, each Receiving Party shall:

- 3.20.1.1. Hold all Confidential Information of a Disclosing Party in strict confidence;
- 3.20.1.2. Protect all Confidential Information of a Disclosing Party with at least the same degree of care and in accordance with the security regulations by which it protects its own Confidential Information;
- 3.20.1.3. Not use, reproduce, or copy any Confidential Information of a Disclosing Party except as necessary for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
- 3.20.1.4. Not disclose any Confidential Information of a Disclosing Party to any person or entity except the Receiving Party's agents, contractors, employees, and representatives with a need to know for purposes of performing any duties or exercising any rights under, pursuant to, or in connection with this Agreement unless the Disclosing Party otherwise agrees in writing;
- 3.20.1.5. Not remove any Confidential Information of a Disclosing Party from the continental United States;
- 3.20.1.6. Return or destroy all Confidential Information of a Disclosing Party and any copies of such Confidential Information upon request of the Disclosing Party and, in any event, when no longer needed or permitted for use under, pursuant to, or in connection with this Agreement; and
- 3.20.1.7. Advise its agents, contractors, employees, and representatives of their obligations with respect to the Confidential Information of a Disclosing Party.

3.20.2. No Receiving Party shall have any obligation under this Section (Confidentiality) as to any Confidential Information of a Disclosing Party that:

- 3.20.2.1. Was previously known to it free and clear of any obligation to keep it confidential;
- 3.20.2.2. Except as otherwise provided under this Agreement, is disclosed to third parties by the Disclosing Party without restriction;
- 3.20.2.3. Is or becomes publicly available by other than unauthorized disclosure;

3.20.2.4. Is independently developed by it; or

3.20.2.5. Is disclosed in response to requests made under the Texas Public Information Act or a court order. However, the Receiving Party ordered to disclose the Confidential Information shall: (i) give the Disclosing Party of the Confidential Information prompt written notice of all such requests, and (ii) cooperate with the Disclosing Party's efforts to obtain a protective order protecting the Confidential Information from disclosure.

3.20.3. No Receiving Party shall be liable for the inadvertent or accidental disclosure of Confidential Information of a Disclosing Party, if the disclosure occurs despite the exercise of a reasonable degree of care, which is at least as great as the care the Receiving Party normally takes to protect its own Confidential Information of a similar nature.

3.20.4. Contractor shall obtain written agreements from its agents, employees, contractors, and subcontractors that bind them to the terms of this Section (Confidentiality).

3.21. LICENSES AND PERMITS

3.21.1. Contractor shall obtain, maintain, and pay for all licenses, permits, and certificates including all professional licenses required by any statute, ordinance, rule, or regulation. Contractor shall immediately notify the Director of any suspension, revocation, or other detrimental action against his license.

3.22. COMPLIANCE WITH LAWS

3.22.1. Contractor shall comply with all applicable state and federal laws and regulations and the City Charter and Code of Ordinances.

3.23. COMPLIANCE WITH EQUAL OPPORTUNITY ORDINANCE

3.23.1. Contractor shall comply with the City's Equal Employment Opportunity Ordinance as set out in Section 15-17 of the Code of Ordinances.

3.24. NON-DISCRIMINATION

3.24.1. Contractor shall comply with the applicable non-discrimination provisions required by the United States of America, including but not limited to the provisions of 49 CFR Part 21. These provisions are inclusive of any amendments which may be made to such regulations. Further, Contractor shall include the summary of the provisions of 49 CFR Part 21, as may be amended, in subcontracts it enters into under this Agreement. This summary is set forth in **Exhibit C**.

3.25. MWBE COMPLIANCE

- 3.25.1. It is the City's policy to ensure that Minority and Women Business Enterprises ("MWBEs") have the full opportunity to compete for and participate in City contracts. The objectives of Chapter 15, Article V of the City of Houston Code of Ordinances, relating to City-wide percentage goals for contracting with MWBEs, are incorporated into this Agreement.
- 3.25.2. Contractor shall make good faith efforts to award subcontracts in at least **24%** of the value of this Agreement to MWBEs. The City's policy does not require Contractor to in fact meet or exceed this goal, but it does require Contractor to objectively demonstrate that it has made good faith efforts to do so. To this end, Contractor shall maintain records showing:
- 3.25.2.1. subcontracts and supply agreements with Minority Business Enterprises,
 - 3.25.2.2. subcontracts and supply agreements with Women's Business Enterprises, and
 - 3.25.2.3. specific efforts to identify and award subcontracts and supply agreements to MWBEs.
- 3.25.3. Contractor shall submit periodic reports of its efforts under this Section to the City Office of Business Opportunity Director in the form and at the times he or she prescribes.
- 3.25.4. Contractor shall require written subcontracts with all MWBE subcontractors and suppliers and shall submit all disputes with or among MWBE subcontractors to mediation in Houston, Texas, if directed to do so by the City Office of Business Opportunity Director.

3.26. DRUG ABUSE DETECTION AND DETERRENCE

- 3.26.1. It is the policy of the City to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by Contractors while on City Premises is prohibited. Contractor shall comply with all the requirements and procedures set forth in the Mayor's Drug Abuse Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), which is incorporated into this Agreement and is on file in the City Secretary's Office.
- 3.26.2. Before the City signs this Agreement, Contractor shall file with the City Contract Compliance Officer for Drug Testing ("CCODT"):
- 3.26.2.1. a copy of its drug-free workplace policy,
 - 3.26.2.2. the Drug Policy Compliance Agreement substantially in the form set

forth in **Exhibit D**, together with a written designation of all safety impact positions and,

- 3.26.2.3. if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the form set forth in **Exhibit E**.
- 3.26.3. If Contractor files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six months during the performance of this Agreement (or on completion of this Agreement if performance is less than six (6) months), a Drug Policy Compliance Declaration in a form substantially similar to **Exhibit F**. Contractor shall submit the Drug Policy Compliance Declaration to the CCODT within thirty (30) days of the expiration of each 6-month period of performance and within thirty (30) days of completion of this Agreement. The first six-month period begins to run on the date the City issues its Notice to Proceed or, if no Notice to Proceed is issued, on the first day Contractor begins work under this Agreement.
- 3.26.4. Contractor also shall file updated designations of safety impact positions with the CCODT if additional safety impact positions are added to Contractor's employee work force.
- 3.26.5. Contractor shall require that its subcontractors comply with the Executive Order, and Contractor shall secure and maintain the required documents for City inspection.

3.27. CONTRACTOR'S PERFORMANCE

- 3.27.1. Contractor shall make citizen satisfaction a priority in providing services under this Agreement. Contractor shall train its employees to be customer service-oriented and to positively and politely interact with citizens when performing contract services. Contractor's employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in the Director's opinion, Contractor is not interacting in a positive and polite manner with citizens, he or she shall direct Contractor to take all remedial steps to conform to these standards.

3.28. PAY OR PLAY

- 3.28.1. The requirements and terms of the City of Houston Pay or Play program, as set out in Executive Order 1-7, as revised from time to time, are incorporated into this Agreement for all purposes. Contractor has reviewed Executive Order No. 1-7, as revised, and shall comply with its terms and conditions as they are set out at the time of City Council approval of this Agreement.

ARTICLE 4. DUTIES OF CITY

4.1. PAYMENT TERMS

- 1.1.1. The City shall pay and Contractor shall accept fees set forth in **Exhibit B** as full compensation for all Services rendered and Deliverables furnished by Contractor under this Agreement. The fees must be paid from allocated funds as provided in **Section 4.5.**, inclusive of all sections therein.

4.2. TAXES

- 4.2.1. The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. Contractor's invoices to the City must not contain assessments of any of these taxes. The Director will furnish the City's exemption certificate and federal tax identification number to Contractor if requested.

4.3. METHOD OF PAYMENT

- 4.3.1. The City shall pay Contractor on the basis of invoices submitted by Contractor and approved by the Director in such detail showing the Services performed and Deliverables provided and the attendant fee. The City shall make payments to Contractor at its address for notices within thirty (30) days of receipt of an approved invoice.
- 4.3.2. If the Director disputes an invoice Contractor submits for any reason, including lack of supporting documentation (as may be required by the Director in his sole discretion), the Director shall temporarily delete the disputed item and pay the remainder of the invoice. The Director shall promptly notify Contractor of the dispute and request remedial action. After the dispute is settled, Contractor shall include the disputed amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

4.4.3 Early Payment Discount

The City of Houston's standard payment term is to pay 30 days after receipt of invoice or receipt of goods or services, whichever is later, according to the requirements of the Texas Prompt Payment Act (Texas Gov't Code, Ch. 2251). However, the City will pay in less than 30 days in return for an early payment discount from vendor as follows:

- Payment Time - 10 Days: 2% Discount
- Payment Time - 20 Days: 1% Discount

If the City fails to make a payment according to the early payment schedule

above, but does make the payment within the time specified by the Prompt Payment Act, the City shall not receive the discount, but shall pay no other penalty. When the payment date falls on a Saturday, Sunday, or official holiday when City offices are closed and City business is not expected to be conducted, payment may be made on the following business day.

4.4. LIMIT OF APPROPRIATION

4.4.1. The City's duty to pay money to Contractor under this Agreement is limited in its entirety by the provisions of this Section.

4.4.2. In order to comply with Article II, Sections 19 and 19a of the City's Charter and Article XI, Section 5 of the Texas Constitution, the City has appropriated and allocated \$ 574,654.19 to pay money due under this Agreement (the "Original Allocation"). The executive and legislative officers of the City, in their discretion, may allocate supplemental funds for this Agreement, but they are not obligated to do so. Therefore, the Parties have agreed to the following procedures and remedies:

4.4.2.1. The City makes a Supplemental Allocation by issuing to Contractor a Service Release Order, or similar form approved by the City Controller, containing the language set out below. When necessary, the Supplemental Allocation shall be approved by motion or ordinance of City Council.

<p align="center">NOTICE OF SUPPLEMENTAL ALLOCATION OF FUNDS</p> <p>By the signature below, the City Controller certifies that, upon the request of the Director, the supplemental sum set out below has been allocated for the purposes of the Agreement out of funds appropriated for this purpose by the City Council of the City of Houston. This supplemental allocation has been charged to such appropriation.</p> <p align="center">\$ _____</p>

4.4.2.2. The Original Allocation plus all supplemental allocations are the "Allocated Funds". The City shall never be obligated to pay any money under this Agreement in excess of the Allocated Funds. Contractor must assure itself that sufficient allocations have been made to pay for Services it provides. If Allocated Funds are exhausted, Contractor's only remedy is suspension or termination of its performance under this Agreement, and it has no other remedy in law or in equity against the City and no right to damages of any kind.

4.5. CHANGES

4.5.1. At any time during the Agreement Term, the Director may issue a Change Order to increase or decrease the scope of services or change plans and specifications, as he or she may find necessary to accomplish the general purposes of this Agreement. Contractor shall furnish the services or deliverables in the Change Order in accordance with the requirements of this Agreement plus any special provisions, specifications, or special instructions issued to execute the extra work. Any Change to the scope of activities identified in **Exhibit A** shall be mutually agreed to prior to the issuance of a Change Order.

4.5.2. The Director will issue the Change Order in substantially the following form:

CHANGE ORDER	
TO:	[Name of Contractor]
FROM:	City of Houston, Texas (the "City")
DATE:	[Date of Notice]
SUBJECT:	Change Order under the Agreement between the City and [Name of Contractor] countersigned by the City Controller on [Date of countersignature of the Agreement]
Subject to all terms and conditions of the Agreement, the City requests that Contractor provide the following:	
[Here describe the additions to or changes to the equipment or services and the Change Order Charges applicable to each.]	
Signed:	
[Signature of Director]	

4.5.3. The Director may issue more than one Change Order, subject to the following limitations:

4.5.3.1. Council expressly authorizes the Director to approve a Change Orders up to \$50,000. A Change Order of more than \$50,000 must be approved by the City Council.

4.5.3.2. If a Change Order describes items that Contractor is otherwise required to provide under this Agreement, the City is not obligated to pay any additional money to Contractor.

4.5.3.3. The Total of all Change Orders issued under this Section may not increase the Original Agreement amount by more than 25%.

4.5.4. Whenever a Change Order is issued and executed by both Parties, Contractor shall furnish all material, equipment, and personnel necessary to perform the work described in the Change Order. Contractor shall complete the work within the time prescribed. If no time for completion is prescribed, Contractor shall complete the work within a reasonable time. If the work described in any Change Order causes an unavoidable delay in any other work Contractor is required to perform under this Agreement, Contractor may request a time extension for the completion of the work. The Director's decision regarding a time extension is final.

4.5.5. A product or service provided under a Change Order is subject to inspection, acceptance, or rejection in the same manner as the work described in the Original Agreement, and is subject to the terms and conditions of the Original Agreement as if it had originally been a part of the Agreement.

4.5.6. Change Orders are subject to the Allocated Funds provisions of this Agreement.

4.6. ACCESS TO DATA

4.6.1. The City shall, to the extent permitted by law, allow Contractor to access and make copies of documents (including electronically stored information) in the possession or control of the City or available to it that are reasonably necessary for Contractor to perform under this Agreement.

4.6.2. The City does not, however, represent that all existing conditions are fully documented, nor is the City obligated to develop new documentation for Contractor's use.

4.6.3. For any raw data created, assembled, used, maintained, collected, or stored by the Contractor for or on behalf of the City, Contractor shall provide the City either the raw data itself or the ability to extract the raw data in a format mutually agreed upon by both parties at no additional cost to the City.

4.7. NO QUANTITY GUARANTEE

4.7.1. This Agreement does not create an exclusive right in Contractor to perform all services concerning the subject of this Agreement. The City may procure and execute contracts with other consulting firms for the same, similar, or additional services as those set forth in this Agreement or any Scope of Services or Change Order.

4.7.2. The City makes no express or implied representations, warranties, or guarantees whatsoever, that any particular quantity, type, task area, or dollar amount of services will be procured or purchased from Contractor through this Agreement or

any Scope of Services or Change Order; nor does the City make any express or implied representations, warranties, or guarantees, whatsoever for the amount or value of revenue that Contractor may ultimately derive from or through this Agreement or any Scope of Services or Change Order.

ARTICLE 5. TERM AND TERMINATION

5.1. TERM

5.1.1. Unless sooner terminated in accordance with the terms and conditions hereof, this Agreement shall commence on December 1, 2016 and expires on November 30, 2018.

5.2. RESERVED

5.3. TERMINATION FOR CONVENIENCE BY THE CITY

5.3.1. The Director may terminate this Agreement at any time by giving 30 days written notice to Contractor, with a copy of the notice to the CPO. The City's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future.

5.3.2. On receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement and cancel all existing orders and subcontracts that are chargeable to this Agreement. As soon as practicable after receiving the termination notice, Contractor shall submit a final invoice marked "FINAL" showing in detail the Services performed under this Agreement up to the termination date.

5.3.3. TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED, IF ANY, ARE CONTRACTOR'S ONLY REMEDIES FOR THE CITY'S TERMINATION FOR CONVENIENCE, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF THIS AGREEMENT. CONTRACTOR WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT AS SPECIFIED IN THIS SECTION), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE CITY'S TERMINATION FOR CONVENIENCE.

5.4. TERMINATION FOR CAUSE BY THE CITY

5.4.1. If Contractor defaults under this Agreement, the Director may either terminate this Agreement or allow Contractor to cure the default as provided below. The City's right to terminate this Agreement for Contractor's default is cumulative of all rights and remedies which exist now or in the future. Default by Contractor occurs if:

5.4.1.1. Contractor fails to perform any of its material duties under this

Agreement;

5.4.1.2. Contractor becomes insolvent;

5.4.1.3. all or a substantial part of Contractor's assets are assigned for the benefit of its creditors; or

5.4.1.4. a receiver or trustee is appointed for Contractor.

5.4.2. If a default occurs, the Director may, but is not obligated to, deliver a written notice to Contractor describing the default and the termination date. The Director, at his sole option, may extend the termination date to a later date. If the Director allows Contractor to cure the default and Contractor does so to the 's satisfaction before the termination date, then the termination is ineffective. If Contractor does not cure the default before the termination date, then the Director may terminate this Agreement on the termination date and pay Contractor for all Services performed, if any, through such date.

5.4.3. To effect final termination, the Director must notify Contractor in writing. After receiving the notice, Contractor shall, unless the notice directs otherwise, immediately discontinue all Services under this Agreement, and promptly cancel all orders or subcontracts chargeable to this Agreement.

5.5. REMOVAL OF CONTRACTOR-OWNED EQUIPMENT AND MATERIALS

5.5.1. Upon expiration or termination of this Agreement, Contractor is permitted 10 days within which to remove Contractor-owned material and equipment from the City's premises. The City shall make such material and equipment readily available to Contractor. The time period may be extended upon approval by the Director. The Director reserves the right to deny any extension of time.

ARTICLE 6. MISCELLANEOUS

6.1. INDEPENDENT CONTRACTOR

6.1.1. Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City.

6.2. FORCE MAJEURE

6.2.1. Timely performance by both Parties is essential to this Agreement. However, neither Party is liable for reasonable delays in performing its obligations under this Agreement to the extent the delay is caused by Force Majeure that directly impacts the City or Contractor. The event of Force Majeure may permit a reasonable delay in performance but does not excuse a Party's obligations to complete performance under this Agreement. Force Majeure means: fires, interruption of utility services, epidemics in the City, floods, hurricanes,

tornadoes, ice storms and other natural disasters, explosions, war, terrorist acts against the City or Contractor, riots, court orders, and the acts of superior governmental or military authority, and which the affected Party is unable to prevent by the exercise of reasonable diligence. The term does not include any changes in general economic conditions such as inflation, interest rates, economic downturn or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Force Majeure does not entitle Contractor to any reimbursement of expenses or any other payment whatsoever.

- 6.2.2. This relief is not applicable unless the affected Party does the following:
 - 6.2.2.1. uses due diligence to remove the effects of the Force Majeure as quickly as possible and to continue performance notwithstanding the Force Majeure; and
 - 6.2.2.2. provides the other Party with prompt written notice of the cause and its anticipated effect.
- 6.2.3. The Director will review claims that a Force Majeure that directly impacts the City or Contractor has occurred and render a written decision within fourteen (14) days. The decision of the Director is final.
- 6.2.4. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Agreement by the City.
- 6.2.5. If the Force Majeure continues for more than five days from the date performance is affected, the Director may terminate this Agreement by giving seven (7) days' written notice to Contractor. This termination is not a default or breach of this Agreement. **CONTRACTOR WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION EXCEPT FOR AMOUNTS DUE UNDER THE AGREEMENT UP TO THE TIME THE WORK IS HALTED DUE TO FORCE MAJEURE.**
- 6.2.6. Contractor is not relieved from performing its obligations under this Agreement due to a strike or work slowdown of its employees. Contractor shall employ only fully trained and qualified personnel during a strike.

6.3. SEVERABILITY

- 6.3.1. If any part of this Agreement is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either Party.

6.4. ENTIRE AGREEMENT

6.4.1. This Agreement merges the prior negotiations and understandings of the Parties and embodies the entire agreement of the Parties. No other agreements, assurances, conditions, covenants (express or implied), or other terms of any kind, exist between the Parties regarding this Agreement.

6.5. WRITTEN AMENDMENT

6.5.1. Unless otherwise specified elsewhere in this Agreement, this Agreement may be amended only by written instrument executed on behalf of the City (by authority of an ordinance adopted by the City Council) and Contractor. The Director is only authorized to perform the functions specifically delegated to him or her in this Agreement.

6.6. APPLICABLE LAWS

6.6.1. This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction.

6.6.2. Venue for any litigation relating to this Agreement is Harris County, Texas.

6.7. NOTICES

6.7.1. All notices to either Party to the Agreement must be in writing and must be delivered by hand, facsimile, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express, UPS or any other national overnight express delivery service. The notice must be addressed to the Party to whom the notice is given at its address set out in Section 1.1. of this Agreement or other address the receiving Party has designated previously by proper notice to the sending Party. Postage or delivery charges must be paid by the Party giving the notice.

6.8. CAPTIONS

6.8.1. Captions contained in this Agreement are for reference only, and, therefore, have no effect in construing this Agreement. The captions are not restrictive of the subject matter of any section in this Agreement.

6.9. NON-WAIVER

6.9.1. If either Party fails to require the other to perform a term of this Agreement, that failure does not prevent the Party from later enforcing that term and all other

terms. If either Party waives the other's breach of a term, that waiver does not waive a later breach of this Agreement.

6.9.2. An approval by the Director, or by any other employee or agent of the City, of any part of Contractor's performance does not waive compliance with this Agreement or establish a standard of performance other than that required by this Agreement and by law. The Director is not authorized to vary the terms of this Agreement.

6.10. INSPECTIONS AND AUDITS

6.10.1. City representatives may perform, or have performed, (i) audits of Contractor's books and records, and (ii) inspections of all places where work is undertaken in connection with this Agreement. Contractor shall keep its books and records available for this purpose for at least four years after this Agreement terminates. This provision does not affect the applicable statute of limitations.

6.11. ENFORCEMENT

6.11.1. The City Attorney may enforce all legal rights and obligations under this Agreement without further authorization. Contractor shall provide to the City Attorney all documents and records that the City Attorney requests to assist in determining Contractor's compliance with this Agreement, with the exception of those documents made confidential by federal or State law or regulation.

6.12. AMBIGUITIES

6.12.1 If any term of this Agreement is ambiguous, it shall not be construed for or against any Party on the basis that the Party did or did not write it.

6.13. SURVIVAL

6.13.1 Contractor shall remain obligated to the City under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to, the indemnity provisions.

6.14. PUBLICITY

6.14.1 Contractor shall make no announcement or release of information concerning this Agreement unless the release has been submitted to and approved, in writing, by the Director.

6.15. RISK OF LOSS

6.15.1 Unless otherwise specified elsewhere in this Agreement, risk of loss or damage for each product passes from Contractor to the City upon Acceptance by the City.

6.16 PARTIES IN INTEREST

6.16.1 This Agreement does not bestow any rights upon any third party, but binds and benefits the City and Contractor only.

6.17 SUCCESSORS AND ASSIGNS

6.17.1 This Agreement binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in **Section 6.18**. This Agreement does not create any personal liability on the part of any officer or agent of the City.

6.18 BUSINESS STRUCTURE AND ASSIGNMENTS

6.18.1 Contractor shall not assign this Agreement at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest as described in Section 9.406 of the Texas Business & Commerce Code. In the case of such an assignment, Contractor shall immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

6.18.2 Contractor shall not delegate any portion of its performance under this Agreement without the Director's prior written consent which consent shall not be unreasonably withheld.

6.19 DISPUTE RESOLUTION

6.19.1 For purposes of this Section "Project Administrator" means the person the Director designates to monitor the progress of all Parties' performance under this Agreement.

6.19.2 Except as may otherwise be provided by law, a dispute that (i) does not involve a question of law; (ii) arises during the performance of this Agreement; and (iii) is not resolved between the Project Administrator and Contractor must be handled as described below:

6.19.2.1 The Project Administrator shall put its decision in writing and mail or otherwise furnish Contractor with a copy. Contractor may abide by the decision or may appeal the decision to the Director.

6.19.2.2 If Contractor desires to appeal a decision of the Project Administrator, Contractor must submit a written appeal to the Director. Contractor must file its written appeal within seven Business Days following receipt of the Project Administrator's original decision. The Director shall

provide Contractor with a written response to the appeal within 14 Business Days following its receipt. The decision of the Director is final.

6.20 REMEDIES CUMULATIVE

6.20.1 Unless otherwise specified elsewhere in this Agreement, the rights and remedies contained in this Agreement are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither Party may terminate its duties under this Agreement except in accordance with its provisions.

6.21 CONTRACTOR DEBT

6.21.1 IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FROM ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR. CONTRACTOR SHALL FILE A NEW AFFIDAVIT OF OWNERSHIP, USING THE FORM DESIGNATED BY CITY, BETWEEN FEBRUARY 1 AND MARCH 1 OF EVERY YEAR DURING THE TERM OF THIS AGREEMENT.

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EXHIBIT A

SCOPE OF SERVICES

Contractor agrees to perform the following services in coordination with the Director:

Proactive Legislation

- Work with IGR to identify and prepare potential proactive legislation;
- Assist in developing a strategy to pass the proactive legislation including, but not limited to, meeting with other organizations to provide grassroots support;
- Meet with groups that may oppose legislation to address their concerns with maintaining a strong position for the City;
- Assist in drafting legislation;
- Assist in securing authors, co-authors, sponsors and co-sponsors of the proactive legislation;
- Proactively promote City positions on policy matters to elected officials, their staffs, and other decision makers through personal contact, written testimony, or testimony;
- Brief the Governor, Lt. Governor, Speaker, and other legislative leaders on the importance of the legislation;
- Identify witnesses and prepare strategies for committee hearings;
- If requested by IGR, assist in preparing a bill analysis on proactive legislation;
- Work with IGR in support of the City's position and coordinate all aspects of the legislative strategy;
- Pursue all necessary steps to obtain final enactment into law of proactive legislation; and
- Other services as required by IGR or the City of Houston Legal Department;

Adverse Legislation

- Assist the IGR Team in tracking adverse legislation throughout the legislative process;
- Negotiate with opposition groups during the legislative session. The successful proposer shall work to advance the City's legislation early in the session and attempt to address the opposition's concerns to avoid legislative battles;
- Prepare a strategy to defend against any adverse legislation and implement a legislative strategy involving floor leaders, witnesses, and leadership opposition to the adverse legislation;
- Brief the Governor's staff regarding the impact of negative legislation and develop and implement a strategy to obtain the appropriate action by the Governor; and
- Other services as required by IGR or the City of Houston Legal Department

Filed Legislation

- In consultation with IGR, monitor filed legislation to identify bills which may be adverse to the City;
- Consult with IGR and other appropriate individuals to develop a strategy to defeat unanticipated negative legislation filed during the legislative session;
- Assist in identifying unanticipated damaging amendments that may be offered and in developing a strategy to defeat hostile floor amendments in the House or the Senate;
- Help prepare all witnesses for committee testimony in the House and Senate;

- Brief legislative committee members in advance of any legislation being considered, especially the City of Houston delegation;
- Address the concerns of the members of the appropriate committees, in advance of committee hearings, regarding any legislation or amendments they propose or intend to propose;
- Organize floor action and help develop grassroots support for the delegation members on all proactive legislation; and
- When all bills pass both Houses of the Legislature, work with the Governor's staff to secure the Governor's signature or veto.

General Services

- Build on its working relations with members of the Houston delegation and work with City Council members to develop a system of personal contacts and grassroots support during critical times during the legislative process;
- Coordinate with representatives of other cities on mutually beneficial legislative issues;
- Upon request, be active in the appropriations process on behalf of the City;
- Conduct legislative negotiations, on the City's behalf, based on IGR's instructions;
- Represent the City at fundraisers, receptions, and other related functions in Austin and Houston;
- Assist the City in handling regulatory matters that may arise in state agencies;
- Represent the City and its interests in the formulation of interim studies on municipal issues of interests;
- Perform other state governmental relations activities as requested by the City;
- Maintain a written bill-tracking system to monitor all proactive and negative legislation during the legislative session; and
- Assist the City in any matters of interest that arise during Special Sessions.

EXHIBIT B

FEES

The City shall pay for services and expenses attributable to Contractor in accordance with the following fee schedule:

December 1, 2016 – December 31, 2016	\$10,729.17
January 1, 2017 – May 31, 2017	\$110,639.17 per month
June 1, 2017 – November 30, 2018	\$10,729.17 per month

The City's payment for all Contractor's services and expenses under this Agreement, including those performed by Contractor's subcontractors and agents, shall not exceed \$757,050.08. Payment will be made to Contractor within thirty (30) days of receipt of an invoice approved by the Director.

EXHIBIT C

TITLE VI: NON-DISCRIMINATION

During the performance of this Agreement, Contractor, for itself, its assignees and successors in interest agrees as follows:

1. Compliance with Regulations - The Contractor shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation ("DOT") 49 CFR Part 21, as may be amended from time to time ("Regulations"), which are incorporated by reference and made a part of this Agreement.
2. Non-discrimination - The Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. Solicitations for Subcontracts, Including Procurement of Materials and Equipment - In all solicitation, either by competitive bidding or negotiation, made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports - The Contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the FAA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance - In the event of the Contractor's noncompliance with the non-discrimination provisions of this Agreement, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:
 - 5.1. withholding of payments to the Contractor under the Agreement until the Contractor complies, and/or
 - 5.2. cancellation, termination, or suspension of the Agreement, in whole or in part.
6. Incorporation of Provisions - The Contractor shall include the provisions of paragraphs 1-5 above in every subcontract, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. If the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the Contractor may request the United States of America to enter into such litigation to protect the interests of the United States.

**EXHIBIT D
DRUG POLICY COMPLIANCE AGREEMENT**

I, William Miller Partner as an owner or officer of
(Name) (Print/Type) (Title)
HillCo Partners, LLC (Contractor)
(Name of Company)

have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with City of Houston; and that by making this Contract, I affirm that Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before City issues a notice to proceed:

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures for Contractors (Executive Order No. 1-31).
2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.
3. Monitor and keep records of drug tests given and the results; and upon request from City of Houston, provide confirmation of such testing and results.
4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with City and may result in non-award or termination of the contract by City of Houston.

10/14/16
Date

William Miller
Contractor Name

William Miller
Signature

Partner
Title

EXHIBIT E
CONTRACTOR'S CERTIFICATION
OF NO SAFETY IMPACT POSITIONS
IN PERFORMANCE OF A CITY CONTRACT

I, William Miller, Partner, (Contractor)
(Name) (Title)

as an owner or officer of HillCo Partners LLC have authority to bind
(Name of Company)

Contractor with respect to its bid, and hereby certify that Contractor has no employee safety impact positions, as defined in Section 5.18 of Executive Order No. 1-31, that will be involved

in performing State Lobbying Services. Contractor
(Project)

agrees and covenants that it shall immediately notify City of Houston Director of Human Resources if any safety impact positions are established to provide services in performing this City Contract.

10/14/11
(Date)

William Miller
(Typed or Printed Name)

William Miller
(Signature)

Partner
(Title)

**EXHIBIT F
DRUG POLICY COMPLIANCE DECLARATION**

I, William Miller Partner as an owner or officer of
(Name) (Print/Type) (Title)

Hillco Partners have personal knowledge and full
(Contractor - Name of Company)
 authority to make the following declarations:

This reporting period covers the preceding 6 months from January to June, 20 17.

WMM (Initials) A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ (Initials) Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31. Employees have been notified of such procedures.

_____ (Initials) Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

_____ (Initials) Appropriate safety impact positions have been designated for employee positions performing on City of Houston contract. The number of employees in safety impact positions during this reporting period is _____

_____ (Initials) From _____ (Start date) to _____ (End date) the following test has occurred

	<i>RANDOM</i>	<i>REASONABLE SUSPICION</i>	<i>POST ACCIDENT</i>	<i>TOTAL</i>
Number Employees Tested				
Number Employees Positive				
Percent Employees Positive				

_____ (Initials) Any employee who tested positive was immediately removed from the City worksite consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ (Initials) I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

10/14/16

 (Date)

William Miller

 (Typed or Printed Name)
William Miller

 (Signature)
Partner

 (Title)